

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

2010 FEB 22 PM 4: 58
CLERK US DISTRICT COURT
RICHMOND, VIRGINIA

EMEKA EKE,
25416 Walkers Landing Ct.
Petersburg VA 23803
804-926-3122
Buzum2001@yahoo.com

PLAINTIFF,
PRO SE

VS.

BANK OF AMERICA, NA;

DEFENDANT.

CIVIL ACTION:
NO.3:09CV488(RLW)

MEMORANDUM IN RESPONSE TO BOA'S MOTION TO
DISMISS FOR SUMMARY JUDGMENT.

Plaintiff Emeka S. Eke, by PRO SE, submits this memorandum in support of
Its response to BOA's Motion to dismiss for Summary Judgment pursuant to
Federal Rule of Civil Procedure 12(b)(6).

BACKGROUND

1. Mr. Eke inherited 95% of the Foreign Currencies from his mother who
passed away couples of years ago, the rest of the Currencies were purchased

through his sister over the years who travels over seas from time to time.

2. Mr. Eke's mother, grand mother, father and grand father on his mother's side were all in the Foreign Currency business even before he was born. He is a United State Citizen Since January 30th, 1995 and has worked for the state government for over ten years, in all those years have never been involved in any fraudulent activities as alleged by BOA Nor does he have any criminal record.

3. Mr. Eke has been a customer of BOA since 2003 until his account was closed without his knowledge and was never given a reason for closing his accounts and was denied access on BOA's website and was unable to view and print his bank statements after December 20th, 2006 two months later BOA closed his both accounts and reported him for Suspected of Fraudulent Activities not once but twice on both his savings and checking accounts and exposed his Social Security Number for other agencies on the same report. See (Exhibit D).

4. Mr. Eke savings did not have any negative balance when BOA reported it for fraud, and his checking account was closed as well due to an over draft fees caused by BOA after they intentionally removed his funds and charged Mr. Eke all types of fees including fees that are not part of the

deposit agreement. (1.) See Deposit Agreement. (Exhibit. F. Pg.)

5. When a customer's account is over drafted, it is up to the bank to: (A.) Pay for the transaction, (B.) Charge a fee for paying those transactions; Or (C.) Return the transaction and charge a fee, (D.) Pay for the transaction without charging a fee, or (E.) return the transactions and not charge a fee, the bank has such right to do whatsoever it pleases because they could do all that and get away with it. See BOA'S (Exhibit F. Pg.12.)

6. The reason Mr. Eke's account was over drafted in the first place was because they owed him over \$20,000 dollars on his checking and after BOA acknowledged their mistakes and dismissed their own lawsuit, Mr. Eke waited for months to have his checking account credited but was never credited and refused to take false information from his credit report after him wrote and requested those information to be removed, BOA responded that the report will remain on his credit report.

7. Secondly, an over draft account is not a criminal offense nor a reason to report Mr. Eke for Suspected of Criminal Activities even after BOA knew it was not a Criminal Activity, as of yet Mr. Eke have not received his over \$4.5 million Dollar worth of Foreign Currencies deposited since December 2006, nor has he received over \$20,000 Dollar worth of Foreign Currencies

deposited on his checking that BOA dismissed in April 27th, 2009 with
(PREJUDICE.)

8. This is the United State of America. Since 2003 through 2007 when Mr. Eke found out his account was closed and his funds were removed intentionally without his knowledge and was denied access to find out what happened to his Foreign Currencies, there's never been any fraudulent or irregularities on his account or bank statements and BOA has never disputed the amount deposited and never any changes on bank statements as of today. Mr. Eke has made several attempts from the first day he realized his account was not properly credited, and still shows as pending transactions when he pull up his account from the website.

9. Mr. Eke called the Foreign Currency department on December 15th, 2006 after returning from business trip in Canada and was told his Foreign Currencies was sent back to his local branch to be processed in person due to Germany Currencies are now under European Union and the Egyptian Pounds MUST be processed in person at banking center. to be sent back to Crater Road Petersburg Virginia by Federal Express and not individually as alleged by the defendant BOA.

STANDARD OF REVIEW.

10. Defendant BOA have not shown how plaintiff Pro Se, Emeka Eke's complaint fails to meet Standard of Review and therefore the Motion to dismiss should be denied.

11. Summary judgment is to be denied when there is a genuine issue of material fact by a non-movant. To succeed in a motion for summary judgment, a movant MUST show (A.) That there is no disputed material issues of fact. (B.) That the movant is entitled to judgment as a matter of law. See Fed. R. Civ. 56.1.

12. The Defendant does not have any meaningful motions for summary judgment. They provided the same documents years ago and after the defendant found that there was no merit to their claim filed with the circuit court in February of 2009 including this so called alleged hand written letter and after reviewing all the facts they dismissed their own lawsuit with prejudice.

13. During this discoveries Mr. Eke found the same documents presented by Corporate Investigator Linda Gill and the was no way she could have gotten those if it was not given to her by BOA 's Attorneys.

14. In it's November 10, 2009 Order on defendants motion to Dismiss Mr. Eke's complaint (the "Order"), the court ruled in favor of plaintiff based on facts presented on all FOUR COUNTS, held that Mr. Eke had

sufficiently alleged his claims. Nothing has Changed since then and nothing will change except to ask the court to award Mr. Eke the remaining half of the breach of contract previously ruled in favor of the defendant Bank of America because of the removal of plaintiff's currencies not to gain interest.

15. Discoveries is now over, the evidence provided during this discoveries which defendant intentionally failed to provide to the court will again show that the court's decision should be affirmed and whatever other punitive penalties it pleases the court to add to plaintiff's complaint.

SUMMARY.

16. BANK OF AMERICA acted in acts of malice, in so many different ways maybe the plaintiff may or may not be able to prove malice with all the defendant lawyers, but he sure can prove bad intentions, false advertisements, fabrication of the documents on their statements, slanderous statements made by Corporate Investigator Linda Gill and the rest of BOA'S witnesses sworn statements, given a false statement to the court as part of an exhibit, printing a false statement to the Postal Inspector General to paint Mr. Eke as a criminal, or conducting criminal activities in an effort to gain information from the postal inspector Office General and defendant statement was contradicting and damaging- IN VIOLATION OF RULE

(11b) of Federal Rules of Procedure, on deceptive practices, printing false sworn statements by Ms. Linda Gill and by Ms. Crabtree, by stating that Mr. Eke's Foreign Currencies was Devalued, Non-Negotiable, that his account was closed on 2/7/06, that BOA never reported any information regarding plaintiff's Checking or Savings account to Early Warning, and that the last deposit made to Mr. Eke's Custom savings of over \$4.5 million Dollar in Foreign Currencies was mailed out on 12/05/2006 but the Egyptian Pounds and rest of the other Foreign Currencies deposited at Mr. Eke's Customs Savings Account could not have been processed and then mailed out on December 5th, 2006.

17. Mr. Eke's deposit happened on Friday 5th, 2006, the 6th, and 7th, was on a weekend, and no business on weekends per Mr. Eke's Deposit Agreement. See. (Exhibit. F. pg.28.)

18. We know now during this discoveries that Mr. Eke's Foreign Currencies were never even processed at the location where he made the deposits, all his Foreign Currency Deposits were processed in another city, one of the documents provided by BOA shows Richmond Virginia and those documents were never provided to this court nor the rest of the documents they failed to provide to the court, the actual copies of Mr. Eke's ATM deposits he provided to OCC, Mr. Stephen C. Piepgraos including

Foreign Currency transactions to show that he had internet web account as well as paperless bank statements with BOA and electronic mailing and could not have gotten any Currency in a regular mail if they were mailed at all as alleged by BOA.

19. On December 15th, 2006, Mr. Eke contacted the Foreign Currency Department and they informed him that BOA only uses FEDERAL EXPRESS to ship their Foreign Currencies @ 1-877-240-6886. All the phone records will be provided per Court request due to privileged Information.

20. Mr. Eke is asking the court to investigate the process of shipment of customers Foreign Currencies and if it is possible to put them in an ATM or REGULAR envelope as alleged repeatedly by the defendant, and regardless of how of their alleged excuses, it is NEGLIGENCE not to secure the mailing of the Foreign Currencies as the court is now aware that mailing a Foreign Currency can never be compared to checks or other excuses alleged by the defendant BOA.

21. BOA provided copies of alleged fax backwards, date and time backwards, the time of fax alleged to be at some 3:15am in the morning, another documents of the same receipt showing the same name, date, time

twice on the paper.

See (BOA 00028) , also See (pg. 4 of 12 of BOA's document filed on 01/21/2010 and 02/ 02/2010 a copy BOA Attorneys sent to me. BOA also provided documents unable to read, including Videos showing the alleged Mr. Eke but not on the day of the actual deposits he requested.

22. During the interrogatory process Mr. Eke requested Video of the day he came to the bank to get his bank statements after several months of BOA refused to provide him his bank statements. The Defendant also provided two documents of the same information, this document was a receipt of currency purchase that was not part of the deposit but were listed on their chit sheet as a deposit but still did give it a value, if they would have provided those videos requested by Mr. Eke it would showed once and for that he could not have received his bank statements in the mail as alleged by the defendant. According to the agreement, BOA can save documents including videos in the storage for more than seven years. This is a deceptive practice to hide a critical evidence.

23. BOA provided some chit sheet See (Exhibit 6) they provided few weeks just before the deposition formulated by the defendants lawyer Mr. Lacy and he admitted during the deposition hearing that it came from his law firm but still BOA stated on that chit sheet that Mr. Eke's deposits from

11/20/2006 through 12/01/2006 was only worth \$11.00 U.S. or less.

24. A \$4.5 million in the United Dollar is now worth less than \$11.00 US Dollar alleged by BOA after all this years and as of today there's no disputed amount of the ATM made in 2006 or any corrections made on his bank statement, but on the same CHIT sheet provided by Mr. Lacy.

It states that:

25. (A) ("BANK OF AMERICA DOES NOT HAVE COPIES OF THIS FOREIGN CURRENCIES, BUT A DOCUMENT THAT MR. EKE PROVIDED TO BOA INDICATES THIS TYPE OF CURRENCIES.") (00094.)

26. (B.) (BANK OF AMERICA DOES NOT HAVE COPIES OF THIS CURRENCIES AND THUS CANNOT DETERMINE FOR CERTAIN THEIR U.S. DOLLAR VALUE.") See. (exhibit. 8)

These are some of the documents that Mr. Piepgraos provided to the defendant included documents containing the actual deposited receipts, but the defendant failed to provide them to the court. See (Exhibit. 10.) letter from Mr. Eke to him and list of some of the Foreign Currencies he deposited in 2006.

CONVERSATION

27. Mr. Eke spoke with Mr. Lacy BOA'S Attorney on Monday February 8th, 2010 for about twenty minutes to require more about phone records

provided by Linda Gill. Mr. Lacy stated that Mr. Eke will need the judge's order to request for the rest of the phone records and there should not be a reason to request for the phone records. Mr. Eke advised him that he requested for the phone records since October, 2009 and again during the discoveries after Linda Gill Corporate Investigator for BOA submitted an affidavit of the alleged phone conversations. Mr. Eke added that if the defendant could provide the phone records alleging such conversations on January 17th, 2007, she should also provide phone records for the rest of her alleged statements.

28. Mr. Eke asked Mr. Lacy if he knew Mr. Stephen C. Piepgraos who represented BOA on the WARRANT IN DEBT complaint filed by Mr. Eke on July 2nd, 2007. Mr. Lacy said yes that he knows him and his office is not far from his.

29. Mr. Eke then stated to Mr. Lacy that all the documents except the hand written fax alleged by Linda Gill was given to the defendant Mr. Piepgraos, Mr. Lacy denied that Mr. Piepgraos ever gave him or any one else documents sent to him by Mr. Piepgraos in 2008. See (Exhibit. G) but the letter he sent to Mr. Robertson, Mr. Eke's Attorney at the time stated otherwise.

30. The letter stated about documents Mr. Eke sent to his coleauque Mr.

Piepgraos, it included all the documents Mr. Eke sent to Mr. Piepgraos that Linda Gill have as well without the alleged fax hand written letter.

31. The party's contract does not have any instructions on mailing Foreign Currencies, or what to do in the event it was lost in the mail or how the foreign Currencies should be processed, but all those information should be found on BOA'S website including the maximum daily deposits at their ATM.

32. Furthermore, Mr. Eke would not have opened an account with Bank of America or any bank if he was advised to sign an agreement stating that his Foreign Currencies that is worth over \$4.5million in US Dollar will be mailed regular, or U.S. mail with no way of tracking it and will be put on an envelope the same size envelope found at the ATM. (EXHIBIT. F. pg.26) of Mr. Eke's Deposit Agreement and Disclosures under Foreign Currency.

33. On September 7,2002, plaintiff opening "MYACCESS CHECKING" see (exhibit A) from defendant's own exhibit, with BOA. Account Number 004118486567. On August 15th, 2003, plaintiff ADMITS opening an interest bearing "CUSTOM SAVINGS" see (exhibit B) from defendant's own exhibit. Account Number 004129800284. On November 20th, 2006, plaintiff ADMITS depositing foreign currencies into an ATM at

South Crater Road, Petersburg Virginia 23803 and was credited accordingly per his bank statement and have provided receipts of that days deposits including Countries deposited during this discoveries. See (Exhibit 1.) of plaintiff's complaint.

34. Plaintiff OBJECTS to the Foreign Currencies alleged by the defendant on November 20th, 2006, they are not part of the deposit and does not add up to the actual receipts provided by the plaintiff. An objected chit sheet was provided during this discoveries by the defendants law firm Mr. Lacy. See (exhibit 2.) from plaintiff. The defendant did not want to provide that to the court because they know the court will deny their motion, the chit sheet was formulated couple of months ago and was provided during this discoveries.

35. On November 28th, 2006, plaintiff ADMITS depositing foreign currency in to an ATM at South Crater Road, Petersburg Virginia 23803 and was credited accordingly per his bank statements provided to him in July including the receipts defendant requested during this discoveries.
See. (Exhibit 3)

36. On December 1st, 2006, plaintiff ADMITS depositing Foreign Currencies at the ATM at South Crater road, Petersburg Virginia 23803 and his deposits was credited accordingly per his bank statements including

receipts of the deposited Countries and their credited amount by BOA.

See (Exhibit 4.)

STATEMENTS OF DISPUTED MATERIALS

37. Plaintiff DENIES the return of the Foreign Currencies alleged by defendant. See paragraph 11. (Crabtree Dec. !! 20.) Plaintiff DENIES Paragraph 12. (Crabtree Dec !! 20). His bank statement was given to him at the banking location in Petersburg, Virginia On May and again July 2007 By Ms. WENDY. R. CHAMBLISS on Crater Road branch location in Petersburg Virginia.

38. Plaintiff DENIES Paragraph 13. and objects to the accusations. Plaintiff DENIES Paragraph 14, 15, of Crabtree's statement and objects to the accusations.

39. For the record, on those dates alleged by defendants witness Ms. Crabtree on her sworn affidavits, Mr. Eke was out of the country and could not have received the Foreign Currencies on any envelop containing a Foreign Currencies alleged by BOA.

See (Exhibit.5) of plaintiffs bank statement provided to him on July 2007, shows how long it took Mr. Eke to get his own bank statement from BOA . See (Exhibit C) of the plaintiff's bank statement.

This case was never closed by Linda Gill and there's no document to show that accepts her sworn statements.

40. Mr. Lee Parker and Mr. Darren both Attorneys went to the bank location in an effort to help the plaintiff get some closure on the whereabouts of his Foreign Currency deposits. Ms. Theresa Vaughan advised Mr. Parker and his partner Darren that she will not give out any information unless Mr. Eke was present.

41. Mr. Parker called Mr. Eke and advised him to come back to the bank.

Mr. Eke Came in and advised Mr. Parker and his partner Darren that Ms. Vaughn is the person that has been given him the run around, the same person that advised him to deposit the Foreign Currencies at the ATM and Ms. Pamela Turner was present, and Ms. Vaughan is also the same person who threatened to call security on Mr. Eke when he wanted to know why he's been given the runaround, and the bank refused to give him his bank statement. At this point she stated to Mr. Parker and Mr. Darren that she can't give them any information without defendants Attorneys present.

42. Mr. Parker advised them to provide Mr. Eke his bank statement.

43. Mr. Eke explain to Mr. Parker that each time plaintiff came to the bank requesting for his bank statement, Ms. Wendy R. Chambliss Theresa

Vaughan advised Mr. Eke that they can not access his account or give out any information per instruction from RISK Department, that Mr. Eke's account is under investigation with the Risk Department and will not give out any information his account. Mr. Parker advised Ms. Theresa it is Mr. Eke's civil right to get his bank statements regardless of the investigation.

44. Mr. Eke received his bank statement from Ms. Wendy R. Chambliss she informed him to come to the bank and pick up his bank statements printed in May, and July, 2007. It has the phone number and name of the person who faxed the documents to Ms. Who gave it to Mr. Eke.

45. The Video Camera can verify all this information and Mr. Robertson requested the production of the Videos and the defendant refused to provide those videos including the all records from 12/20/06 through 3/3/07 will show that the plaintiff was still talking to the defendant BOA up to the point of filing a complaint with the District Court in Petersburg Virginia.

46. Mr. Stephen Piepgraos was defendant's Attorney who could not wait to leave the court room after the judge instructed Mr. Eke to file his case with the Circuit Court due to the amount Mr. Eke was seeking. See (Exhibit 6.) Mr. Eke contacted the Attorney for BOA Mr. Piepgraos some time in April of 2008 in an effort to get BOA credit my account. Important documents was sent to him after the conversation with the plaintiff and a

letter in support of the conversation. Documents of some of the deposits made in 2006 including a documents to show that Mr. Eke has paperless account and has access to do internet transactions including instructions from BOA's website with details of how BOA process their Foreign Currencies with their customers but for some reasons, those documents were never provided to the court during this discoveries, instead BOA only provided documents that was not part of the deposits, those documents were sent to show that the plaintiff did have access to the internet and have done transactions on BOA websites but was denied access to use the website after he started inquiring for his Foreign Currencies and his bank statements.

47. In response to all the communications between Corporate investigator Linda Gill and many other personnel in the fraud department including the Foreign Currency department was an effort to locate or to find out what happened to his deposited Foreign Currencies and at no time did Mr. Eke said to Linda Gill that he received the last package contauning the Egyptian Pounds, those statements are fabricated and un true including the allegation made by her, alleging that on 1/04/2007 Mr. Eke told her he was taking her daughter to the Emergency Hospital and that is one out of other slanderous statements in this proceedings, including the phone she alleged Mr. Eke called her on 1/17/2007 alleging telling her he received his

Egyptian Pounds. See (Exhibit. J.) Mr. Eke will let the court decide on the merits of the slander complaint alone.

48. In addition to her lies and sworn Affidavits (PAR.19) She stated that 'Based on Plaintiff's admissions that he received the Foreign Currency that BOA returned to him by U.S. Mail, I closed my investigation into this matter.'

49. Deposition is now completed but not once did Mr. Eke received any documents of closure of her investigations to this Court or to OCC including copies of BOA's response to OCC except her sworn statements.

50. She also stated that the fax sent to her by Mr. Eke was sent on January 5th, 2007 at 03:52 am. Mr. Eke is asleep and will never fax any documents to any one at that time. Mr. Eke does not even have Linda Gill's fax number and does not have a reason to request for one. The same sworn statements that Ms. Crabtree provided to this court stating that Mr. Eke's account was closed on a different date from his bank statement and Mr. Eke was reported once to ChexSystem Inc and Early Warning LLC and stating that the Foreign Currencies were processed by her or some another person.

51. Mr. Eke was reported to the ChexSystems Inc and Early Warning LLC two different occasions; exposing his Social Security Number. Mr. Eke did not sign an agreement with BOA for them to print his Social Security

Number on ChexSystems when they could have used his account number. They should be liable for their negligent in this matter. First report was on 2/07/07 and on 2/13/07. See. (Exhibit D.2pgs.) Mr. Eke made several attempts by contacting all the agencies that was aware of the alleged liable report on his credit report with no result.

RESPONSE TO ARGUMENT

COUNT 1 CONVERSION

52. Paragraph 1 through 51 of the complaint are hereby incorporated by reference as though set out in full in Count 1 of Mr. Eke's complaint.

53. Mr. Eke deposited Foreign Currencies into BOA's ATMS totaling over \$4,366,146.78. On November 20th, 2006, November 28th, 2006, December 1st, 2006 and December 1st, 2006 BOA accepted each of Mr. Eke's Foreign Currency deposits and reduced each of the same to it's exclusive dominion and control. Mr. Eke's Foreign Currency deposits, each determined by the Bank to be equivalent to a specific United States dollar value was recorded as being deposited into Mr. Eke's checking and savings account. See. (Exhibit. 1-4) (a,b,c.), the documents Mr. Lacy provided to plaintiff's Attorney during discoveries.

54. BOA or it's agents have continued to maintain exclusive dominion

and control over Mr. Eke's Currencies. See, Exhibit. 1-4(A&B) It shows method of how Mr. Eke's deposit was credited but due to bank's Negligence they were left for their investigative purposes and were credited but not the whole amount.

55. Mr. Eke has made numerous demands for the return of his Currencies or it's equivalent value in U. S. dollars. BOA has repeatedly failed to answer Mr. Eke's demands. The ATM transactions of 11/20/06 were not credited accordingly at the time of deposit but is corrected after the Bank awarded back Mr. Eke's \$20,000+ the bank have failed to credit his checking account. See; Dismissal Order. (Exhibit. H.)

56. The ATM transactions of 11/28/06 were credited according to his bank statement and changes have been since the deposits. The ATM transactions of 12/01/06 made to Mr. Eke's Checking Account were credited accordingly and no disputes on his July 2008 bank statement he received from BOA. See. Bank Statcments. (Exhibit C.)

57. All the Foreign Currencies deposited at the ATM in 2006 was converted at BOA websites except for two, GERMANY CURRENCIES AND EGYPTIAN CURRENCIES and those currencies were supposed to be processed in person at the banking location in the first place but was told by the assistant bank manager Ms. Theresa Vaughan to deposit all the

Currencies at the ATM due to lack of time and the size of the Currency.

which was on Mr. Eke's Deposit Agreement supports ATM
TRANSACTIONS?

which includes all internet transactions, it also allows unlimited access to
check your balances, Pay bills and accepts electronic bank statements. etc.

See (D.A.A.D.) Deposit Agreement And Disclosures. Access ID, On Line Banking
And Bill Payment Services And Electronic Banking Disclosures, which Mr.
Eke is authorized to use, including instructions on ordering and selling
Foreign Currencies on line with all the instructions that comes with on line
banking. See. (Exhibit F. Pg.8 & 13.)

ON LINE BANKING AND BILL PAYMENT SERVICES

58. (A) "You may use your computer to obtain account information and
make certain transfers and to pay bills. When you subscribe to these
services, we provide you with an agreement and disclosures for the service
and link your eligible accounts." (B.) " Our free Online Banking service
allows you to check balances, track account activity, pay bills and more.
(C.) With Online Banking you can also view up to 18 months of this
statement online and turn off delivery of your paper statement". Enroll at
www.bankofamerica.com, which Mr. Eke did and therefore could not have
received his Foreign Currencies in the mail if it was mailed at all.

See. (Exhibit. C.)

59. Under Virginia law, “ Conversion is the wrong assumption or exercise of the right of ownership over goods or chattels belonging to another in denial of or inconsistent with the owner’s rights.” Economopoulos vs. Kolaitis, 259 Va. 806, 814, 528 S.E.2d 714, 719 (2000).

60. Conversion includes any distinct act of dominion wrongfully exerted over property that is in denial of, or inconsistent with the owner’s right. United Leasing Corp. vs. Trift Ins. Corp; 247 Va. 299, 305, 440 S.E.2d 902, 905(1994). To maintain an action for Conversion, the movant must “ have a property interest in and be entitled to the immediate possession of the item alleged to have been wrongfully converted.” (citing United Leasing, 247 Va. At 305, 440 S.E.2d at 906).

61. What BOA assumed dominion and control over was in fact the plaintiff’s Foreign Currencies, not money. The defendant Attorney states in their motion to dismiss (MTD), that “in November and December Plaintiff, on four different occasions attempted to deposit various types of Foreign Currencies into a BOA automated teller machine an (“ATM”) in Petersburg, Virginia.” MTD (p.1 prg.2). They further states that upon its physical inspection of the deposits, however, BOA determined that the Foreign

Currencies were non-Redeemable, Non-Negotiable and Devalued.

MTD (p2 parag2). Also See Exhibit.(o.) Notice of what determines a Country's Foreign Currency Devaluation.

62. If the four deposit attempts were indeed unsuccessful, then Mr. Eke's foreign Currencies could not have been converted to actual money. If the Currencies were not converted, but in fact rejected, then the property in its unconverted form remains that of the true owner, not BOA.

63. The defendant BOA alleges that it returned what equivalent was to over 4.5 million dollars in Foreign Currencies to Mr. Eke by regular mail in an envelope so proudly alleged by Ms. Linda Gill and that he received them per their conversations. It offers no proof of the mailing especially when Mr. Eke was on a business trip during this alleged mailing of his Foreign Currencies. In addition, the dates she alleged it was mailed are not believable.

It is impossible to process the Currencies on those days BOA alleged they were mailed.

64. They could not have process the Currencies deposited on 12/01/2006 at Mr. Eke's Custom Savings made after business hours on Friday when Saturday and Sunday are non-business days and Monday was December 4th, 2006. According to the documents BOA formulated during this discoveries, some or all of Mr. Eke's Currency were processed in another city or state.

BUSINESS DAYS.

"Our business days are Monday through Friday, including bank holidays. We may switch from one business day to the next business day before the end of the calendar day. Hours of the business day for any given banking center are available at the banking center. See. (Exhibit. F. pg.28). Also on BOA websites, "Deliveries are not available on SATURDAYS". (A) "BOA USES EXPRESS COURIER TO SHIP ALL OF YOUR FOREIGN CURRENCY PACKAGES. (B). THE EXPRESS COURIER WILL REQUIRE YOUR SIGNATURE UPON DELIVERY." © Only one delivery attempt will be made, ETC.

See. (Exhibit. F). (8 pages). Moreover, the BOA Deposit Agreement does not grant BOA the right to refuse by returning Foreign Currencies to a consumer by regular U.S. Mail. Linda Gill Corporate investigator on her sworn statement alleged that Savings account deposits made on 12/01/2006 was mailed out on December 5th, 2006, but the capture date was dated on 12/05/2006 these documents were never provided to the court because it will show that none of Mr. Eke's deposits were never mailed in the first place.

65. Due to the fact that the plaintiff did not deposit money into his BOA account, the cases relied upon by BOA to support its Motion to Dismiss are not controlling. If the case law is not controlling, BOA's Motion to Dismiss should be denied and Mr. Eke should be awarded all the amount on his complaint on record.

66. WHEREFORE, your Plaintiff PRO SE moves this Honorable Court for Judgment against the Defendant, BANK OF AMERICA f/n/a NATIONS, BANKING CORPORATION, in the sum of \$4,366,146.78 or it's present day value of \$33,280,566 if sold back to private dealers with interest on the

principle balance at 6% per annum from December 1st, 2006 until paid, and all costs associated with this proceeding. See. Exhibit. (1-4a-c)

COUNT 2 BREACH OF EXPRESS WRITTEN CONTRACT.

BOA Breach the deposit agreement in many ways by not returning Mr. Eke's Foreign Currencies.

A contract is a legally enforceable agreement between two parties. Each party to a contract makes a promise to either perform a certain duty or pay a certain amount. If one party fails to act as promised, and the other party has fulfilled the duties under the contract, the other party is entitled to legal relief.

67. Paragraph 1 through 66 of the Complaint are hereby incorporated by reference as though set out in full in Count 1 and 2 of the plaintiff's Complaint.

68. The deposit agreement on page 26 as alleged by defendant did not say anything about a Foreign Currency by mail if it did then bank of America will be in violation of deceptive practices. You will never see any section of the agreement in reference to a Foreign Currency deliveries sent by regular mail or without some type of insurance, except as advertised on BOA's Website. See. Exhibit. (I.)(8pgs.) and (F.) (Pg. 12-14)

Methods Bank Of America uses for Foreign Currency Transactions With their Customers including, Mailing and Crediting of Customers Account Per (FMS) Instructions See. Exhibit. (J) Par. (6020.10a-d) (6020.20a-c) and (6020.30) of (FMS) FINANCIAL MANAGEMENT SERVICES, A BUREAU OF THE UNITED STATES DEPARTMENT OF THE TREASURY.

69. Mr. Eke entered into an agreement with the BOA for financial

services. The agreement established the Bank as debtor and the Plaintiff as Creditor, the Bank agreed to pay the plaintiff interest on his 'Custom Savings' and 'MYACCESS Checking'.

70. There are no provisions in the Deposit Agreement that permit's the return of Mr. Eke's property by regular mail or Mr. Eke would not have signed an agreement or deposited his Currencies if such contract exists.

71. The defendant is quiet aware of the process of mailing a Foreign Currencies, those documents were part of the documents Mr. Eke sent to Mr. Piepgraos Attorney for BOA on the Warrant In Debt case. He provided those documents to Mr. Lacy. In addition, during the deposition on December, 2009 some documents was provided to Mr. Lacy but he failed to provide those documents to the court.

FOREIGN CURRENCY TRANSACTIONS.

Delivery. A signature is required for all deliveries. For Foreign Currency Orders over \$1,000 **MUST** be picked up at a full service Bank of America banking Center. See. (Exhibit. I) step 3;

72. The defendant BOA's Deposit Agreement does not place a dollar restriction on deposits, nor does it require its customers to make deposits in person at a BOA banking Center. To demand that plaintiff do so is a breach particularly when the Deposit Agreement makes ATM services available. See. Exhibit F. (D.A.D.) (pg13&14) (1.) **ELECTRONIC BANKING SERVICES.**

(2.) DISCLOSURES. (3.) ONLINE BANKING AND BILL PAYMENT SERVICES.

The defendant BOA has provided conflicting statements over and over again as to the status of Mr. Eke's deposits once received. The defendant BOA states the following in its 6/8/08 response to OCC inquiries:

73. Bank of America has conducted an investigation of the customer's complaint. Mr. Eke deposited Foreign Currency at the ATM on or about 12/1/06, declaring the U.S. Dollar value of those single deposits to be sum of \$4,344,166.81 as reflected on the account statement provided to him in May and July, of 2007 by Ms. Wendy R. Chambliss and there's has not been any disputes on Mr. Eke's bank statement. BOA stated that the currencies were returned to him via U.S. mail due to the large dollar value he declared, with instructions to deposit the currency in person at a (BOA) banking center.

74. The 6/18/08 statement acknowledges that Mr. Eke's Foreign Currency deposit was made and that BOA assigned value to the Foreign Currencies to the sum of \$4,344,166.81. The defendant BOA later received another inquiry from the OCC. The defendant's 11/21/08, response to the very same inquiry is completely different from its 6/18/08 response. It states in relevant part:

75. "The Currency was determined to be non-redeemable and devalued and was returned to the customer by first class mail to the address of record

for the customer, following the Bank's standard practice." This response was sent to the OCC in November- Five months after the initial response was sent to the OCC.

76. Both statements simply can not be true when addressing the same exact transactions. If the matter was investigated and conclusions drawn as to the disposition of Mr. Eke's \$4,344,166.81 Foreign Currency claim in June 2008, then there are no reasonable facts that could possibly result in such a substantial change in the November 2008 BOA response. The two explanations are in conflict and cannot possibly be reconciled.

77. The defendant BOA's response or accounts for the status of the 11/20/06 that was only credited for \$1,760.72, 11/28/06 \$10,892.72 and the 12/01/06 \$9,326.53 deposits which were all removed after BOA conversion and crediting Mr. Eke's account. They are still unaccounted for since the dismissal of over \$ 20,000 BOA removed from Mr. Eke's account and has credited his account including the rest of his deposits as of yet.

78. BOA have failed to show how the Foreign Currencies could have been processed separately, but Mr. Eke was advised that all the Currencies were all together and was sent back to the local bank to be processed in person. At no time did Ms. Theresa Vaughan said to Mr. Eke that his Foreign Currency deposits were mailed individually.

79. The two deposits made on 12/01/06 to checking and savings account happened the same day but less than ten minutes apart on a Friday. So those two Currencies were processed the same day according to the documents BOA provided during this discoveries. See. Exhibit. 1-4(a-b)

80. In addition all the ATM deposits on 11/20/06 through 12/01/06 was never rejected, was no notice stating that his currency deposit was Devalued or Non-Negotiable.

81. The only item of Non-Negotiable notice on Mr. Eke's bank statement and the document prepared by Ms. Shelly in Richmond Virginia was the 11/20/06 deposit BOA held for almost one month, reasons unknown. That particular deposit was part of Mr. Eke's original complaint with Sussex County on July, 2007 for \$22,700 including court fees and other fees chaged against Mr. Eke's account. See. Exhibit. 10. After the judge advised Mr. Eke to file his claim with the circuit court, BOA filed their own complaint without merit, but the thereafter dismissed their own claim. Mr. Eke will file a separate claim based on the out come of the present complaint in the Federal Court if the court will permit. See. Exhibit. (H&K). "warrant indebt and Dismissal Order".

82. WHEREFORE, YOUR PLAINTIFF PRO SE request the court to

deny defendant's request to dismiss and moves this Honorable Court for judgment against the Defendant, BANK OF AMERICA f/n/a NATIONS BANK, A BANKING CORPORATION, in the sum of \$4,366,146.78 with 0.20% interest on the principle balance, which is his reasonable expectation, from December 1st, 2001 until paid, and the cost associated with this proceeding.

COUNT 3 LIABLE OR SLANDER

83. Paragraph 1 through 82 of the complaint is hereby incorporated by reference as though set out in full in Count 1, 2 and 3 of the plaintiff's complaint.

SUSPECTED FRAUD ACTIVITIES.

When a party alleges fraud, it must plead the facts of the alleged fraud with particularity. See. (FRCP 9(b).)

Fraudulent Activities is an intentional deception made for personal gain or to damage another individual. FRAUD IS A CRIME AND A CIVIL LAW VIOLATION. BOA accused plaintiff of committing this type of act on his account without any legal prove.

84. On or about 2/07/2007, BOA accused Mr. Eke of Suspected Fraud activities and reported the same to ChexSystems and Early Warning

Services, LLC. See exhibit. D.(pg.1). On or about 2/12/07 BOA forced closed Mr. Eke's account alleging that Mr. Eke's account was overdrawn in the amount of -\$20,815.18 on his checking. BOA also closed his savings account with a ZERO balance for no reason. See. Exhibit.

85. On or about 2/13/07 BOA again accused Mr. Eke of Suspected Fraud Activity with ChexSystems and Early Warning Services, LLC.

See. (Exhibit. D.)(2pgs.)

86. ChexSystems provides deposit account verification verification

services to its financial institution members to aid them in identifying account applicants who may have a history of account mishandling.

87. ChexSystems published the information provided by BOA which resulted in a refusal of Mr. Eke's checks, opening a bank account with companies using ChexSystems check verification services. See. D.(2pgs.)

88. Early Warning Services is a limited liability company owned by Bank of America, BB&T, JPMorgan Chase and Wells Fargo. Early Warning helps organizations obtain a single view of Fraud Activity across the enterprise and manage Fraud on a cross institution basis.

Mr. Eke demanded BOA and their Risk Agencies to produce evidence of Suspected Fraudulent activity so that he could dispute the evidence.

89. On or about 2/27/09 the BOA sued Mr. Eke in Sussex County, Virginia Circuit Court. See. (Exhibit. G) The bank lawsuit stated that the plaintiff was indebted to BOA in the sum of \$20,815.18.

90. On or about 4/27/09 the Sussex County Circuit entered an order dismissing Bank's complaint with prejudice. (See. H.) BOA has continually With held Mr. Eke's \$20,815.18 in Foreign Currency and has failed to return the same to Mr. Eke.

91. Even though the matter has been dismissed with prejudice, the bank

refuses to remove damaging and false information from Mr. Eke's financial records via ChexSystem and Early Warning Services, LLC. BOA has not provided any documents to show removal of such report on his credit report, even if they did, the fact that they intentionally reported a false information serious enough to prevent him from opening accounts not once at list four deferent occasions, have resulted in Mr. Eke filing this lawsuit.

92. Mr. Eke demanded Bank of America to produce evidence of suspected Fraudulent activity so that Mr. Eke could dispute the evidence. Mr. Eke received a letter from Mr. Quinton Brown an associate with WACHOVIA BANK confirming just one out of the incidents that BOA put Mr. Eke through for over two years in his credit report. See. (Exhibit. 'M'.) and he will be willing to testify per courts request.

93. On April 1st, 2009 Mr. Eke received a response from BOA's Risk Identification Support Center, stating that " We have performed a detailed review of the accounts and found that the reason for closure is accurate. Therefore, the decision to end the account relationship and the reporting to ChexSystems, Inc and Early Warning Services, LLC is accurate and will remain in effect." A copy was sent to Early Warning Services, LLC. See, (Exhibit. L.) BOA stated on their affidavits signed by Mary Jane Couture, she stated that BOA never reported any information regarding plaintiffs

Checking or Savings accounts to Early Warning Services, LLC. See.

(Exhibit. E.) Courture Dec. parag.7. The letter sent to Mr. Eke completely stated otherwise in cluding a (cc) copy sent to (E.W.S., LLC.)

94. WHEREFORE, your plaintiff moves this Honorable Court for Judgment against the Defendant, BANK OF AMERICA f/n/a NATIONS BANK, A BANKING CORPORATION, in the amount of \$15,000,000.00 in compensatory damages and 6% interest on the principle balance, untill judgment is paid, and \$350,000.00 in punitive damages and the cost associated with this proceeding.

COUNT 4 NEGLIGENCE.

95. Paragraph 1 through 80 of the Complaint is hereby incorporated by reference as though set out in full in Count 1,2,3 and 4 of the plaintiff's Complaint.

96. During the period of 11/20/2006 through 12/01/2006, Mr. Eke deposited \$4,366,146.78 in Foreign Currency into his active checking and savings account held with the BOA.

97. The bank assumed the duty to protect Mr. Eke's property from loss by virtue of its acceptance of the Currencies. The Bank credited Plaintiff's

checking and Savings account with the Foreign Currency equivalent in U.S. Dollars.

98. Bank Of America alleged that it placed the equivalent of over 4 million dollars of plaintiff's money.

99. BOA breached its duty when it failed to properly safeguard over 4 million dollars of Mr. Eke's money.

100. The plaintiff has not received his Currencies in the mail as alleged by defendant nor has BOA given him credit otherwise. The plaintiff has suffered losses as a result of BOA's actions.

101. Mr. Eke has suffered mental anguish, nervous disorder, suicidal tendencies and depression as a direct result of BOA's negligence, accused of Suspected Fraud Activities and due to breach of contract caused by the bank.

102. Mr. Eke lost his dwelling to foreclosure, unable to open bank account with all the banks that uses ChexSystems.

103. Mr. Eke was unable to concentrate at work and due to side effect caused by the medications, he lost his job for post abandonment.

104. Mr. Eke has been under doctor's care on prescribed psychotropic drugs and mood stabilizers, due to severe emotional distress caused by the bank.


105. WHEREFORE, your plaintiff request that the court should deny

defendant motion to Dismiss and moves this Honorable Court for judgement against the Defendant, Bank OF AMERICA f/n/a NATIONAL, A BANKING CORPORATION, in the sum of \$25,000,000 in compensatory damages and 6% interest on the principle balance, until judgment is paid, and \$350,000.000 in punitive damages and the cost associated with this proceeding.

106. I Mr. Eke Plaintiff Pro Se do declare that the information, documents and witness documents including all references according to Federal Rule of Civil Procedure 10(c) are included and to the best of my knowledge are true copies in this legal proceeding from their original sources and witness written documents and any other documents including phone records per Court's request will be provided in due time.

107. I declare under penalty of perjury under the laws of the United States Of America that the foregoing is true and correct, and that this declaration was executed on February 19th, 2010.

Signed:



Dated:



CERTIFICATE OF SERVICE

I hereby certify that on Tuesday February 23rd, 2010 I serve the foregoing

By Regular or signature mail to the following:

Michael E. Lacy.
Virginia State Bar No. 48477
Attorney For Defendant Bank Of America, N.A.
TROUTMAN SANDERS LLP
1001 Haxall Point
Richmond, VA 23219
Telephone: (804) 697-1200


2/19/2010